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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,153	12/18/2001	Geoffrey C. Ammerman	16938-102	8197
7590	05/09/2005		EXAMINER	
Kevin W. Cyr Rider, Bennett, Egan & Arundel, LLP Suite 2000 333 South Seventh Street Minneapolis, MN 55402			JEANTY, ROMAIN	
			ART UNIT	PAPER NUMBER
			3623	
DATE MAILED: 05/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/026,153	AMMERMAN ET AL.	
	Examiner Romain Jeanty	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 January 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

1. This Office action is in response to the amendment filed January 6, 2005. By the amendment, claims 1, 3, 5 have been amended. No claims were canceled, and no new claims were added. Claims 1-6 are pending in the application.

### **Response to Arguments**

2. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over XXX (U.S. Patent No. Guinta et al. (US Patent No. 6,161,101)).

As per claim 1, Guinta et al disclose a data storage medium storing a plurality of inquiries regarding the performance of an employee of a business and a plurality of behavior based responses for each of the plurality of inquiries (col. 3, lines 62 through col. 4 line 13), with each of the plurality of behavior based responses having a value assigned according to the desirability

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to the business of the behavior based response (See figure 4, and col. 8, lines 6-20), an interface coupled to the data storage medium to present the plurality of inquiries and the plurality of behavior based responses for each of the plurality of inquiries and to receive a selected behavior based response for each of the plurality of inquiries to store the assigned value of the selected behavior based response (col. 3, lines 7-15, and col. 4, lines 19-30), a processor coupled to the data storage medium to retrieve the values and to transform the values into at least one measure of performance, and an output coupled to the processor to provide the at least one measure of performance in one of human readable form and machine readable form (i.e., presenting the performance data in any suitable format) (col. 3, line 62 through col. 4 line 13; col..11 line 25 through 12 line 20).

As per claim 2, discloses wherein the **at least one** measure of performance is individual employee performance, a departmental performance average (col. 4, lines 31-51).

Claim 3 is a computer readable medium storing a computer program for evaluating a business of apparatus claim 1. Therefore claim 3 is rejected under the same rationale relied upon of claim 1.

Claim 4 is a computer readable medium storing a computer program for evaluating a business of apparatus claim 2. Therefore claim 4 is rejected under the same rationale relied upon of claim 2.

Claim 5 is a method for evaluating a business of apparatus claim 1. Therefore claim 5 is rejected under the same rationale relied upon of claim 1.

Claim 6 is a method for evaluating a business of apparatus claim 2. Therefore claim 6 is rejected under the same rationale relied upon of claim 2.

### Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJ

May 2, 2005

*Romain Jeanty*  
ROMAIN JEANTY  
PRIMARY EXAMINER  
*Art Unit 3623*